

Appl. No. 09/463,958
Amendment dated: December 8, 2004
Reply to OA of: September 8, 2004

REMARKS

Applicant wishes to thank the Examiner for the allowance of claims 8 through 10 and 16. Applicant has amended the claims to more particularly define the invention taking into consideration the outstanding Official Action and in an effort to place the application in immediate condition for allowance. If any issues remain after this amendment, the Examiner is invited to telephone the undersigned attorney in an effort to expedite the prosecution to an early allowance.

In this regard, while Applicant does not agree that claims 17-25 are anticipated by the prior art, these claims have been canceled without prejudice or disclaimer in an effort to expedite the prosecution to an early allowance by obviating the rejection under 35 USC 102. Accordingly, it is most respectfully requested that this rejection be withdrawn. Applicant most respectfully submits that all the claims now present in the application are in full compliance with 35 U.S.C. §112 and are clearly patentable over the references of record.

The objection of claims 11-15 and 21-24 under 35 U.S.C. 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim has been carefully considered but is most respectfully traversed.

Applicant specifically traverses the rejection of claim 11 which is dependent on allowed claim 10. Claim 11 only specifies that the astaxanthin in esterified form is provided in the form of an algal meal, in other words the algal meal is administered to a human and the astaxanthin in esterified form is contained in small droplets of the algal as would be appreciated by one of ordinary skill in the art to which the invention pertains. Applicant most respectfully submits that in fact, this is an unpurified form of astaxanthin in esterified form and the claims does not contain other ingredients which do not materially affect the basic and novel characteristics of the invention. See MPEP §2111.03 in this regard.

This is similarly true with respect to the carbohydrates of claim 12 which Applicant does not believe will have any appreciable effect on the symptoms of

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indigestion. Accordingly, it is most respectfully requested that this objection be withdrawn.

The rejection of claims 11-15 and 21-24 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention has been carefully considered but is most respectfully traversed.

The Examiner states that these claims are indefinite because they do not properly depend from the independent claims, claims 1 (sic 11) and 17. Both claim 11 and claim 17 specify a composition that "consists essentially of" xanthophylls. "Consisting essentially of" is considered partially closed claim language that does not allow for the addition of any other active ingredients. It is further urged in the Official Action that, however, claims 12-15 and 21-25 add additional active ingredients to the composition. Thus, it is concluded in the Official Action that these claims do not properly depend from the parent claims which consist essentially of xanthophylls. These statements are specifically traversed in view of the above comments with respect to the objection to these claims and the noted section of the MPEP. Accordingly, it is most respectfully requested that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,
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